

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION**

GUERRA & MOORE, LTD., L.L.P.
Plaintiff

v.

**MARCO A. CANTU, DEBTOR,
LAW OFFICE OF MARK A. CANTU,
P.L.L.C., AYSSA CANTU and
SANDRA DIAZ,
Defendants**

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CIVIL ACTION NO. 7:11-cv-299

PLAINTIFF'S SECOND AMENDED COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Guerra & Moore, Ltd, LLP, Plaintiff, complaining of and against Marco A. Cantu, Law Office of Mark A. Cantu, Ayssa Cantu, and Sandra Diaz, Defendants, and file this their Plaintiff's Second Amended Complaint, and for cause of action would respectfully show to the Court as follows:

1. Guerra & Moore, Ltd, LLP ("Guerra & Moore") is a Texas limited liability partnership. Guerra & Moore is a Creditor of Cantu, and holder of a judgment against Mark Cantu.
2. Defendant Marco A. Cantu, Debtor, ("Cantu") is a Texas resident with principal place of residence in the Southern District of Texas, and is also doing business as Law Office of Mark A. Cantu. Defendant is a Debtor in Chapter 7. Cantu has already made an appearance in this case.
3. Defendant Law Office of Mark A. Cantu, PLLC ("Cantu PLLC") is a Texas limited liability company with principal place of business in the Southern District of Texas, and has already made an appearance in this case.

4. Defendant Ayssa Cantu is a Texas resident with principal place of residence in the Southern District of Texas. Ayssa Cantu can be served with process at her principal place of business: 3149 Centerpointe Drive, Edinburg, Texas 78539.

5. Defendant Sandra Diaz is a Texas resident with principal place of residence in the Southern District of Texas. Sandra Diaz can be served with process at her usual place of business: 801 Nolana, McAllen, Texas 78501.

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1334. This is a proceeding “related to” a matter filed under Title 11.

7. Venue is proper in the Southern District of Texas, McAllen Division, pursuant to 28 U.S.C. §1408, and 1392, because Debtor Cantu voluntarily filed bankruptcy in this District and Division, and there is a pending case involving Cantu filed under Title 11 in this District and Division. All Defendants’ residences and/or principal places of business are located in this District and Division.

8. On May 6, 2008, Debtor Cantu filed a voluntary petition for Chapter 11 protection (No. 08-70260; *In re Marco A. Cantu and Roxanne Cantu, Debtors*) for himself individually, his wife, and his wholly-owned corporation, Mar-Rox, Inc. On June 26, 2009, Debtor Cantu’s Chapter 11 case was converted to a case under Chapter 7. Plaintiff to this case filed a complaint objecting to Debtor Cantu’s discharge (09-07018; *Schmidt et al v. Cantu*) pursuant to 11 U.S.C. §727, and a final judgment was entered denying Debtor Cantu’s discharge on February 17, 2011. The judgment became final on March 3, 2011. .

9. Creditor Guerra & Moore is the holder of a final judgment against Debtor Cantu in Cause No. 2005CVQ00954-D2; *Guerra & Moore, Ltd, LLP v. Mark Cantu d/b/a Law*

Office of Mark Cantu; In the 111th District Court, Webb County, Texas, based upon a finding of tortious interference with contract and tortious interference with prospective contract. Guerra & Moore's judgment is an allowed claim in the Cantu bankruptcy case, and is a non-appealable judgment. Guerra & Moore's judgment totals in excess of \$1.6 million. Guerra & Moore's judgment against Cantu has been duly abstracted in the records of the Hidalgo County Clerk. Plaintiff has executed on its judgment against Cantu, which was returned unsatisfied.

10. Debtor Cantu has operated a law office in McAllen, Texas during the pendency of his bankruptcy cases, and up to the present, under the name "Law Office of Mark A. Cantu." As of March, 2011, Cantu has established "Law Office of Mark A. Cantu, PLLC" through which he is operating his law practice. Debtor Cantu's practice has been primarily a plaintiff's personal injury practice in which Cantu has a contingent fee interest in the cases he handles for clients. Some of the cases in Cantu's portfolio of contingent fee cases were obtained by Cantu pre-petition, some were obtained during the pendency of Cantu's Chapter 11 case, and some were obtained post-conversion to Chapter 7. Plaintiff has an interest in the fees generated post-conversion in such cases. Defendant Cantu has then transferred cases to Cantu PLLC and other attorneys in an attempt to avoid creditors. The Trustee and Plaintiff have an interest in some of the attorney's fees generated by Cause No. CI-10-3422-F; *Nelda McDonald Arredondo et al v. Juan Martinez Diaz*; In the Hidalgo County Court at Law No. 6 and Cause No. DC-04-401; *Josephine Navarro v. Aguilera Realestate Holdings d/b/a Aguilera's Pediatric Clinic*; In the 381st District Court, Starr County, Texas. On information and belief, the Trustee *may* have an interest in some or all of the attorney's fees generated by Cause

No. C-2135-09-C; *Aida Torres Soto v. Healthcare Unlimited, Inc. et al*; in the 139th District Court, Hidalgo County, Texas. The Trustee has taken the position that he has now received whatever interest Cantu's Estate had in Cantu's cases, and is no longer involved in this case. On information and belief, Cantu has also made transfers of cases to Cantu PLLC and other attorneys , which were also transferred for no consideration.

11. In light of the denial of Cantu's discharge in his bankruptcy case, Creditor Guerra & Moore has an interest in the attorney's fees generated by the cases Cantu obtained post-conversion. Under Texas law, attorney's fees are non-exempt property and subject to execution, levy and/or turnover. Guerra & Moore has identified numerous cases obtained by Cantu post-conversion, and which are not property of the Estate, which were transferred to Cantu PLLC and/or other attorneys:

- a. Cause No. CI-10-2861-A; *Rene Juarez et al, v. Elizabeth P. Torres*, In the Hidalgo County Court at Law No. 1;
- b. Cause No. CI-10-3184-A; *Roman Jimenez v. John Warren Glover*; In the Hidalgo County Court at Law No. 1;
- c. Cause No. CI-10-3666-A; *Christina Medina et al. v. Aurora Figueroa*; In the Hidalgo County Court at Law No. 1;
- d. Cause No. CI-10-4244-B; *Miranda Jones v. Rigoberto Poulang-Mot*; In the Hidalgo County Court at Law No. 2;
- e. Cause No. CI-10-248-B; *Rodolfo Longoria v. Angel Leal*; In the Hidalgo County Court at Law No. 2;
- f. Cause No. CI-10-4241-E; *Mirla Valderas v. Lisa Marie Garcia*; In the Hidalgo County Court at Law No. 5;
- g. Cause No. CI-09-3545-E; *Miguel Angel Martinez v. Raquel Navarro*; In the Hidalgo County Court at Law No. 5;
- h. Cause No. C-2725-10-B; *Alberto Garcia Araguz et al v. Francisco Rocha Gutierrez*; In the 93rd District Court, Hidalgo County, Texas;
- i. Cause No. CI-10-1511-E; *Juan Medina v. Javelina Construction South, Inc.*; In the Hidalgo County Court at Law No. 5;
- j. Cause No. CI-10-4247-F; *Marco Antonio Perez v. Jane Madden Beakey*; In the Hidalgo County Court at Law No. 6;
- k. Cause No. CI-10-3258-F; *Juan Delgado, Jr. et al v. Ruben D. Pena*; In the Hidalgo County Court at Law No. 6; and

- I. Cause No. CI-10-1958-E; *Rodolfo Trevino et al. v. Frank Flores et al*; In the Hidalgo County Court at Law No. 5

These cases, without prejudice to other cases potentially in existence, represent the bulk of Cantu's contingent fee cases with any reasonable likelihood of a contingent fee recovery by Cantu. On information and belief, Cantu transferred all of the above-referenced cases for no consideration and/or inadequate consideration. This is clearly a ruse to claim that Cantu has no present interest in any of his cases, but to later pay money to Cantu in the future on these cases.

12. Cantu is an insolvent debtor within the meaning of Tex. Bus. & Com. Code § 24.003(a). Pursuant to Tex. Bus. & Com. Code §24.006(a), Cantu's transfer of all cases identified in this Complaint to Cantu PLLC and/or other attorneys were fraudulent transfers, because Cantu did not receive reasonably equivalent value for the cases, and Cantu was insolvent at the time the transfers were made.

13. Plaintiff has learned of additional cases in which Cantu and/or Cantu PLLC has a fee interest, and which were transferred to other attorneys for no consideration or inadequate consideration. Cantu is an insolvent debtor within the meaning of Tex. Bus. & Com. Code § 24.003(a). Pursuant to Tex. Bus. & Com. Code §24.006(a), Cantu's transfer of cases identified in this Complaint to other attorneys were fraudulent transfers, because Cantu did not receive reasonably equivalent value for the cases, and Cantu was insolvent at the time the transfers were made. Some of these case may not be cases filed as lawsuits, but rather in the pre-lawsuit settlement phase. The attached **Exhibit A** lists such additional cases transferred to Dale Kasofsky and/or Law Office of Dale Kasofsky (formerly Defendants in this lawsuit, and subject to the Temporary Injunction in place in this case).

14. The following cases were transferred by Cantu to Cantu PLLC for no consideration or inadequate consideration. Cantu is an insolvent debtor within the meaning of Tex. Bus. & Com. Code § 24.003(a). Pursuant to Tex. Bus. & Com. Code §24.006(a), Cantu's transfer of all cases identified in this Complaint to Cantu PLLC were fraudulent transfers, because Cantu did not receive reasonably equivalent value for the cases, and Cantu was insolvent at the time the transfers were made. Some of these case may not be cases filed as lawsuits, but rather in the pre-lawsuit settlement phase. The attached **Exhibit B** lists such additional cases transferred to Cantu PLLC.

15. Plaintiff Guerra & Moore seeks the following for Cantu's fraudulent transfers of his cases to Cantu PLLC:

- a. avoidance of the transfers from Cantu to Cantu PLLC;
- b. levy of execution on the assets transferred from Cantu to Cantu PLLC, or upon their proceeds; and
- c. recovery of the reasonable value of the assets transferred by Cantu to Cantu PLLC and/or any other attorneys.

16. Plaintiff Guerra & Moore seeks the recovery of attorney's fees and costs, pursuant to Tex. Bus. & Com. Code §24.013.

17. Guerra & Moore filed its abstract of judgment on March 4, 2011, in Hidalgo County, Texas. Guerra & Moore's judgment against Mark Cantu is predicated upon liability for tortious conduct. On July 29, 2011, a piece of real property was conveyed to Mark A. Cantu and Roxanne Cantu, by warranty deed; to wit:

Lot Nine (9), Block Four (4), Highland Park, an addition to the City of McAllen, Hidalgo County, Texas, as per plat map or plot thereof, recorded in Volume 10, Page 12, Map Records, Hidalgo County, Texas.

("the Property"). Such Property is more commonly known as 809 Sycamore, McAllen, Hidalgo County, Texas. The Property was conveyed to Mark and Roxanne Cantu jointly, during their marriage, and is thus presumed to be community property. Tex. Fam Code. §§3.002, 3.003. The warranty deed recites that the Property was transferred to the Cantus for consideration. All community property is subject to the tort liability of either spouse. Tex. Fam Code §3.202. At all times to which the Property was titled to Cantu, the Cantu's had a different property located on Lakeshore Drive in Edinburg, designated as their homestead. Therefore, the Property cannot have been their homestead. The Property cannot be the Cantus current homestead, as they do not currently own it.

18. Guerra & Moore's judgment lien attached to the Property at the time it came into the possession of Mark A. Cantu. Tex. Prop. Code §52.001.

19. On June 20, 2012, the Cantu's transferred the Property to Ayssa Cantu, likely for no consideration or inadequate consideration.

20. On November 5, 2012, Ayssa Cantu transferred the Property to Sandra Diaz, likely for no consideration or inadequate consideration.

21. Guerra & Moore's lien remains attached to the Property located at 809 Sycamore.

22. Guerra & Moore request entry of a judgment foreclosing their judgment lien on the Property at 809 Sycamore, and issuing judgment that such Property shall be levied and sold in Execution to satisfy Guerra & Moore's judgment lien.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Court cite Defendants to appear and answer, and that upon final hearing, the Court

render judgment in favor of Plaintiff and against Defendants for: compensatory damages, a judgment of foreclosure and sale in execution, attorney's fees, costs of Court, pre- and post-judgment interest, and all such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

GUERRA LAW GROUP, PLLC

4201 North McColl Rd.
McAllen, Texas 78504
(956) 618-3000 Phone
(956) 686-4200 Fax

By: _____/s/ David J. Lumber_____
David J. Lumber
Texas Bar No. 24002504
S.D. Tex. No. 22085

**ATTORNEY FOR PLAINTIFF GUERRA &
MOORE, LTD, LLP**

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, a true copy of this instrument has been served via ecf service and or regular U.S. mail on the 14th day of December, 2016, as follows:

_____/s/David J. Lumber_____

Kelly K. McKinnis
612 Nolana, Suite 240
McAllen, TX 78504

Diann Bartek
1400 N. McColl Rd.
McAllen, Texas 78501

EXHIBIT A
Cases transferred to Law Office of Dale Kasofsky and/or LODK

1. Aguilar, Miguel A.
2. Aguilera, Dalia
3. Aguilera, Heydi
4. Aguilar, Aiden
5. Aleman, Abram
6. Almaguer, Maria Guadalupe
7. Alvarez, Cecilia
8. Amar, Sergion,
9. Anzaldua, Edgardo
10. Anzaldua, Emiliano
11. Anzaldua, Luz
12. Arce, Emmanuel
13. Avila, David
14. Avila, Diana
15. Berlanga, Ricardo
16. Bravo, Ana
17. Cabrera, Annelle
18. Cabrera, Rafael
19. Cantu, Ricardo
20. Cardenas, Homero
21. Cobos, Adam
22. Cortez, America
23. Cortez, Diana
24. Cortez, Ramon
25. De la Rosa, Adalberto
26. De la Rosa, Jennifer
27. De la Rosa, Maria
28. De los Santos, Esperanza
29. Escalante, Aaliyah
30. Escalante, George
31. Escalante, George, Jr.
32. Escalante, Javier, Jr.
33. Escalante, Ma. Victoria
34. Escamilla, Javier
35. Esparza, Luisa
36. Esparza, Roberto,
37. Figueroa, Evelia
38. Figueroa, Juan
39. Flores, Jesus
30. Flores, Jose L.
31. Flores, Maria
32. Flores, Nathan
33. Galvan, Rene

34. Garcia, Alexa
35. Garcia, Manuel
36. Garcia, Manuel, Jr.
37. Garza, Lauro Y.
38. Garza, Lisa
39. Garza, Minerva
40. Gomez, Ernesto
41. Gonzalez, Jose Daniel
42. Gonzalez, Yolanda
43. Guerra, Valentine
44. Gurrola, Jalil
45. Gurrola, Maria
46. Gutierrez, Esteban
47. Gutierrez, Jesse M.
48. Hernandez, Artemio
49. Hernandez, Simon, Jr.
50. Herrera, Dario
51. Islas, Maria
52. Jaramillo, Aracelia
53. Jaramillo, Jaime
54. Jaramillo, Jasmine
55. Jaramillo, Raul
56. Jaramillo, Sandra
57. Jurado, Maria Teodora
58. Leal, Arturo
59. Leal, Jaqueline
60. Ledezma, Briana
61. Lobato, Dayanara
62. Lobato, Maria
63. Lobato, Pedro
64. Longoria, Rodolfo
65. Lopez Evonne
66. Lopez, Margarita
67. Luna, Jose M.
68. Madrigal, Hugo
69. Martinez, Jorge
70. Martinez, Jose Luis
71. Martinez, Juana
72. Martinez, Miguel
73. Martinez, Miguel A.
74. Medina, Christina
75. Medina, Juan
76. Mendoza, Rafael
77. Morales, Hector
78. Morales, Hector, Jr.
79. Moreno, Armando

80. Moreno, Jesus
81. Moreno, Martin
82. Munoz, Leonardo
83. Narvaez, Alvaro
84. Niabes, Cassandra
85. Olvera, Jose
86. Orozco, Roberto, Jr.
87. Ortega, Esmeralda
88. Ortega, Juan
89. Ortiz, Jorge V.
90. Ortica, Mauricio
91. Ozuna, Silverio
92. Pena, Eva
93. Pena, Katherine
94. Pena, Omar
95. Pena, Santiago
96. Perez, Baldemar
97. Perez, Lorenzo
98. Perez, Maria Perla
99. Perez, Simon
100. Ponce, Jorge
101. Portillo, Rafael
102. Portillo, San Juanita
103. Prieto, Erica
104. Prieto, Rosa Delia
105. Ramirez, Daisy
106. Ramirez, Luis. A.
107. Ramirez, Maria E.
108. Reyes Emmanuel
109. Rivas, Eva L.
110. Rivas, Nancy
111. Rivas, Roberto
112. Rivera, Luis Carlos
113. Roberts, Stacy
114. Rodriguez, Adrian
115. Rodriguez, Dinora
116. Rodriguez, Orlando
117. Saenz, Jorge
118. Salazar, Esmeralda
119. Sanchez, Enrique
120. Sandoval, Celeste
121. Sandoval, San Juanita
122. Sandoval Stephanie
123. Santiago, Eddie
124. Silva, Adrian, Santos
125. Solis, Genesis

126. Solis, Maria
127. Soto, Aida
128. Torres, Felipe
129. Torres, Jesus A.
130. Tovar, Joseph
131. Urbina, Tadeo
132. Valdovinos, Angelica
133. Valdovinos, Blanca
134. Valdovinos, Enrique
135. Valdovinos, Gabriela
136. Valdovinos, Julio
137. Valles, Sergio (accident 3/7/10)
138. Valles, Sergio (accident 3/10/10)
139. Vargas, Emma
140. Vargas, Gualtevio
141. Vasquez, Gabriela
142. Vela, Oscar
143. Vidal, Mariela
144. Villarreal, Lauro
145. Villarreal, Narce
146. Villarreal, Sebastian
147. Ybarra, Alicia
148. Zavala Irene
149. Zavala, Maria

EXHIBIT B
Cases transferred to Law Office of Mark A. Cantu, PLLC.

1. Adame, Adriana
2. Alaniz, Oralia
3. Alvarez, John
4. Bernal, Alonzo
- 5.. Cano, Herminia
6. Cantu, Alda
7. Cardoza, Ernesto
8. Castellanos, Gladys
9. Castillo, Maria
10. Charles, Maria
11. Chizer, Allyn Edward
12. Contreras, Bobby
13. Douglas, Brady
14. Elizonda, Edwin
15. Fuentes Laura
16. Gamez, Jennifer
17. Gamez, Joanna
18. Garcia, Minerva
19. Garcia, Roberto
20. Garza, Sandra
21. Gomez, Cassandra
22. Gonzalez, Cecillia
23. Gonzalez, Ruperto
24. Granados, David
25. Granados, Jeklyne
26. Granados, Victor
27. Guerrero, Sergio
28. Gutierrez, Perla
- 29, Guzman, Herminia
30. Hernandez, Anna
31. Hernandez, Juan
32. Hernandez, Juanita
33. Hernandez, Lorena
34. Johnson, Phillip
35. Jones, Miranda
36. Juarez, Omar
37. Juarez, Rene
38. Leos, Marissa
39. Lopez, Brenda
40. Loreda, Ricardo
41. Loreda, Rosario
42. Martinez, Antonio L.
43. Martinez, D Angelo

44. Martinez, Daniella
45. Martinez, Guadalupe
46. Martinez, Joseph
47. Mendoza, Lombardo
48. Morales, Elizabeth
49. Morales, Lisa
50. Morales, Maria
51. Morales, Pedro Garcia
52. Moreno, Jorge
53. Nino, Irma
54. Olmedo Eric
55. Orpoeza, Amalia
56. Oropeza, Juan
57. Ovalle, Adan
58. Ovalle, Emir
59. Pecina, Francisco
60. Peralez, Andrea
61. Peralez, Claudia
62. Peralez, Gabriela
63. Peralez, Hugo
64. Perez, Frankie
65. Perez, Maria L.
66. Perez, Francisco
67. Ramirez, Roberto
68. Reyes, Joanna
69. Reyes, Fermin
70. Rodriguez, Kimberly
71. Rueben, Celia
72. Rueben, Pablo
73. Salinas, Adan
74. Salinas, Janette
75. Sanchez, Ramon
76. Silberto, Yendri H.
77. Solis, Jose
78. Urbina, Tadeo
79. Vaca, Hector
80. Vela, Maria Elena
81. Villarreal, Dailiah
82. Winn, Marisela M.
83. Zuniga, Jesus